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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 395

C. A. BRADLEY, Doing Business as Wolverine Motor Freight Lines, Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO, Appellee.

Statement as to Jurisdiction.

May it please the Court:

The appellant in support of the jurisdiction of this Court to review the above entitled case on appeal, as required by Supreme Court Rule 12, paragraph 1, respectfully represents:

1. The statute believed to sustain the appellate jurisdiction of this Court is Section 237 of the Judicial Code, as amended by the Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 937 (United States Code Annotated, Title 28, Section 344), which provides, in part, as follows:

> "*Appellate jurisdiction of decrees of State courts; certiorari.*—(*a*) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. * * *"

and the Act of January 31, 1928, Chapter 14, 45 Stat. 54 (U. S. C. A. Title 28, Sections 861 *a*, 861 *b*) as amended by the Act of April 26, 1928, Chapter 440, 45 Stat. 466 (U. S. C. A. Title 28, Section 861 *b*).

2. The statute of the State of Ohio, the validity of which is involved, is Ohio General Code, Sections 614-84 to 614-102, inclusive, and especially Sections 614-86 and 614-87.

Section 614-86 provides, in part, as follows:

> "The public utilities commission of the state of Ohio is hereby vested with power and authority to supervise and regulate each such motor transportation company in this state; to fix, alter and regulate rates; to regulate the service and safety of operation of each such motor transportation company; to prescribe safety regulations, and designate stops for service and safety on established routes; to require the filing of annual and other reports and of other data by such motor transportation

companies; to provide uniform accounting systems; and to supervise and regulate motor transportation companies in all other matters affecting the relationship between such companies and the public to the exclusion of all local authorities in this state, except as hereinafter otherwise provided. * * *"

Section 614-87 provides, in part, as follows:

"No motor transportation company shall commence its operation as such in this state, without first obtaining from the public utilities commission a certificate declaring that public convenience and necessity require such operation.

"The commission shall have the power, after notice and hearing, when the applicant requests a certificate to serve in a territory already served by a motor transportation company holding a certificate of public convenience and necessity from the commission, to grant a certificate only when the existing motor transportation company or companies serving such territory do not provide the service required or the particular kind of equipment necessary to furnish such service to the satisfaction of the commission, and in all other cases, with or without hearing, to issue such certificates as prayed for, or to refuse to issue the same, or to issue them for the partial exercise only of the privileges sought, or to issue such certificates for the use of certain kinds of equipment and for the handling of certain kinds of material or merchandise over such routes, and may attach to the exercise of the rights granted by such certificates, such terms and conditions

as, in its judgment, the public convenience and necessity may require. Where a motor transportation company has been actually operating in good faith upon the date of filing the original act in the office of the secretary of state, April twenty-eight, nineteen hundred twenty-three, it shall file with the commission an affidavit showing its principal place of business, full information concerning the physical property, the route over which it has been operating, the schedule or schedules, together with a map of its route, showing the number of miles of route in each municipality and county into, through or along which such route runs or extends, a statement that it has been actually operating over such route or routes in good faith, together with the liability insurance policy or policies required under section 614-99 of the General Code, and thereupon a certificate of public convenience and necessity shall issue, if the commission shall find the statements in said affidavit to be true. But no certificate shall be granted upon any such affidavit unless the same shall have been filed prior to the passage of the amended act, May second, nineteen hundred and twenty-five. * * *

"Before granting any certificate the commission shall take into consideration other existing transportation facilities in the territory, for which a certificate is sought, and in case it appears from the evidence that the service furnished by existing transportation facilities is reasonably adequate the commission shall not grant such certificate. * * *

"On finding of the public utilities commission that any motor transportation company does not give convenient and necessary service

in accordance with the order of such commission such motor transportation company shall be given a reasonable time, not less than sixty days, to provide such service before any existing certificate is cancelled or a new one granted over the route or for the territory mentioned in the finding and order of or hearing before the public utilities commission."

3. The judgment sought to be reviewed was entered on June 8, 1932.

4. The application for an appeal was presented on August 31, 1932.

5. The appeal herein is from a judgment of the Supreme Court of Ohio which affirmed a certain finding and final order of The Public Utilities Commission of Ohio, in a proceeding wherein the appellant had applied to said The Public Utilities Commission of Ohio for a certificate to establish, maintain and operate a motor transportation company, carrying property as a common carrier, in interstate traffic, upon and over a regular route extending from Cleveland, Ohio, to the Ohio-Michigan State line, over Route No. 20, within the State of Ohio. Said The Public Utilities Commission of Ohio, on March 10, 1932, made a finding that Route No. 20, at that time, was so badly congested by established motor vehicle operations that the addition of the appellant's proposed service would create and maintain an excessive and undue hazard to the safety and security of the travelling public, and to the property upon such highway, and entered a final order that in the interest of preserving the public wel-

fare, said application be denied. Subsequent to the entering of said final order and within thirty days thereafter, the appellant filed with said The Public Utilities Commission of Ohio his application for a rehearing on said final order, which application for a rehearing specifically set forth the grounds upon which this appellant considered said final order to be unlawful and void, including the following, to wit:

> "Said application prayed for a Certificate to establish, maintain and operate a motor transportation company, carrying property as a common carrier, in interstate traffic, upon and over a regular route extending from Cleveland, Ohio, to the Ohio-Michigan State line, over State Route No. 20, within the State of Ohio. Said application was denied solely upon the ground that State Route No. 20 is so badly congested by established motor vehicle operations that the addition of this applicant's proposed service would create and maintain an excessive and undue hazard to the safety and security of the traveling public, and to the property upon such highway. Said order was unauthorized and unlawful and in contravention of the rights of this applicant under the Constitution of the United States, and especially the fourteenth amendment thereto, and constitutes an unlawful interference with interstate commerce in violation of Article I, Section 8, paragraph 3 of the Constitution of the United States."

On March 30, 1932, said The Public Utilities Commission of Ohio made an order denying said application for a rehearing. The appellant duly filed a petition in error in the Supreme Court of Ohio to reverse

said final order of said The Public Utilities Commission of Ohio wherein he alleged, as one of the grounds of error, as follows:

> "Said application of the plaintiff in error was denied solely upon the ground that State Route No. 20 is so badly congested by established motor vehicle operations that the addition of the plaintiff in error's proposed service would create and maintain an excessive and undue hazard to the safety and security of the traveling public, and to the property upon such highway. Said order was unauthorized and unlawful and in contravention of the rights of the plaintiff in error under the Constitution of the United States, and especially the fourteenth amendment thereto, and constitutes an unlawful interference with interstate commerce in violation of Article I, Section 8, paragraph 3 of the Constitution of the United States."

On June 8, 1932, the Supreme Court of Ohio, being the highest court of the State of Ohio in which a decision in said case could be had, affirmed said final order of said The Public Utilities Commission of Ohio. Said court held that Sections 614-84 to 614-102, inclusive, of the Ohio General Code, and especially Sections 614-86 and 614-87, which said court construed to authorize said The Public Utilities Commission of Ohio to make said finding and said final order denying the application of this appellant as aforesaid, do not violate the rights of this appellant under the Constitution of the United States, and especially the Fourteenth Amendment thereto, and do not constitute an unlawful interference with interstate commerce in vio-

lation of Article I, Section 8, paragraph 3 of the Constitution of the United States.

6. The issue presented by this appeal relates to the constitutionality of the attempted exercise by The Public Utilities Commission of Ohio of the power vested in it by the sections of the Ohio General Code above referred to to refuse to an interstate common carrier by motor vehicle a certificate of convenience and necessity to operate a motor transportation company carrying property as a common carrier in interstate traffic upon and over a regular route extending from Cleveland, Ohio, to the Ohio-Michigan State Line over Route No. 20 within the State of Ohio solely upon the ground that said highway is so badly congested by established motor vehicle operations that the addition of the appellant's proposed service would create and maintain an excessive and undue hazard to the safety and security of the traveling public and to the property upon such highway. The contentions of the appellant may be briefly summarized as follows:

(*a*) That the power so to exclude from the highways of a state such interstate common carrier by motor vehicle is within the exclusive power of Congress.

Buck v. *Kuykendall*, 267 U. S. 307.
Bush Co. v. *Maloy*, 267 U. S. 317.

(*b*) That the said action of The Public Utilities Commission of Ohio is a regulation of the business of an interstate common carrier by motor vehicle, which regulation is in conflict with the exclusive power of Congress upon that subject.

Buck v. *Kuykendall, supra.*
Bush Co. v. *Maloy, supra.*
Michigan Commission v. *Duke*, 266 U. S. 570.
Sprout v. *South Bend*, 277 U. S. 163.
Interstate Transit, Inc. v. *Lindsey*, 283 U. S. 183.

(*c*) That said action of The Public Utilities Commission of Ohio is arbitrary and unreasonable and is not calculated to eliminate or prevent the supposed hazards resulting from the alleged congestion upon such highway and therefore denies to the appellant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Smith v. *Cahoon*, 283 U. S. 553.

(*d*) That said action of The Public Utilities Commission of Ohio discriminates against the appellant in favor of already certificated common carriers in interstate traffic and in favor of all other operators of motor vehicles used for the transportation of property in interstate commerce.

Smith v. *Cahoon, supra.*
Hammond v. *Schappi Bus Line*, 275 U. S. 164.
Hammond v. *Farina Bus Line*, 275 U. S. 173.

That these issues which were determined by the Supreme Court of Ohio adversely to the appellant involve the constitutional validity of Ohio General Code, Sections 614-84 to 614-102 and especially Sections 614-86 and 614-87 and are therefore within the appellate jurisdiction of this Court by virtue of Section 237 of

the Judicial Code as amended by the Act of February 13, 1925, chapter 229, section 1, 43 Stat. 937 (U. S. Code Annotated, Title 28, Section 344) is demonstrated by the following cases:

Bush Co. v. *Maloy*, 267 U. S. 317;
Hess v. *Pawloski*, 274 U. S. 352;
Sprout v. *South Bend*, 277 U. S. 163;
Interstate Transit, Inc. v. *Lindsey*, 283 U. S. 183;
Smith v. *Cahoon*, 283 U. S. 553.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 237 of the Judicial Code as amended by the Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 937 (United States Code Annotated, Title 28, Section 344), and the Act of January 31, 1928, Chapter 14, 45 Stat. 54 (U. S. C. A., Title 28, Sections 861*a*, 861*b*), as amended by the Act of April 26, 1928, Chapter 440, 45 Stat. 466 (U. S. C. A., Title 28, Section 861*b*).

Respectfully submitted,

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